BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Summary of Argument,
Citation of Authorities,
Argument.

I.

By the terms of the corporation laws of Indiana, a foreign corporation failing to obtain a license as such is forbidden, as a penalty, the use of its courts. If it ceases to exist without having complied, then any rights it ever had are forever barred, even in the hands of its successor, assignee or pledgee.

Barnett v. *Central Republic Bank and Trust Co.* (1935), 100 Ind. App. 495; 196 N. E. 369.

Swing v. *Toner* (1912), 178 Ind. 102; 96 N. E. 946.

Lowenmeyer v. *National Lumber Co.* (1919), 71 Ind. App. 458; 125 N. E. 67.

Burroughs v. *Southern Colonization Co.* (1930), 96 Ind. App. 93; 173 N. E. 716.

Swing v. *Wellington* (1909), 44 Ind. App. 455; 89 N. E. 514.

Wiestling v. *Warthin* (1391), 1 Ind. App. 217; 27 N. E. 576.

2 Burn's R. S. Ind. 1926, Secs. 4909 and 4918.

II.

The making of such contracts, without complying with this law, was an unlawful act by such corporation, and is against the public policy of the State of Indiana.

Indiana Foreign Corporation Act of 1913.

2 Burn's R. S. Ind. 1926, Sec. 4923.

Peter & Burghard Stone Co. v. *Carper,* (1933) 96 Ind. App. 554 (at p. 577), 172 N. E. 319 (at p. 327).

III.

The note and mortgage in question are not enforceable in the State courts of Indiana, and cannot be enforced in the federal courts. The Federal Court must and will accept, adopt and apply the Indiana Statutes and the decisions of its courts of appeals the same as though the Federal court were sitting as a State court.

Erie Railroad Co. v. *Tompkins,* (1938) 304 U. S. 64; 82 L. Ed. 1188; 58 Sup. Court Rep. 817.

Barnett v. *Central Repub. Bank & Tr. Co.,* (1935) 100 Ind. App. 495; 196 N. E. 369.

Equitable Life Insurance Co. v. *Halsey Stuart & Co.,* (Mar. 1941) ..... U. S. .....; 85 L. Ed. 631.

Wichita Royalty Co. v. *City Natl. Bk. of Wichita Falls,* (1939) 306 U. S. 103; 83 L. Ed. 383; 59 Sup. Ct. Rep. 420.

Ruhlin v. *New York Life Ins. Co.,* (1938) 304 U. S. 202; 82 L. Ed. 1290, 58 Sup. Ct. Rep. 860.

West v. *Am. Telegraph & Tel. Co.,* (1940) ..... U. S. .....; 85 L. Ed. 146.

Rosenthal v. *New York Life Ins. Co.,* (1938) 304 U. S. 263; 82 L. Ed. 1330; 58 Supreme Ct. Rep. 874.

New York Life Ins. Co. v. *Jackson,* (1938) 304 U. S. 261; 82 L. Ed. 1329; 58 Sup. Ct. Rep. 871.

Hudson v. *Moonier,* (1938) 304 U. S. 397; 82 L. Ed. 1422; 58 Sup. Ct. Rep. 954.

Gorney v. *Trustees, etc., Orphans' Board,* (1937) 93 Fed. (2) 107.

Russell v. *Todd,* (1940) 309 U. S. 280; 84 L. Ed. 762, 60 Sup. Ct. Rep. 527.

Breisch v. *Central R. R. of N. J.,* ..... U. S. ....., 85 L. Ed. 599 (Mar. 1941).

IV.

The decision of the Indiana Appellate Court in *Barnett* v. *Central Republic Bank & Trust Co.,* 100 Ind. App. 495, reversing the judgment rendered in the Porter Circuit Court, became and is the law of the case, which a state court of Indiana, or a federal court, on a re-trial or on a second appeal thereof, must follow and apply.

Town of Walkerton v. *New York, C. & St. L. Ry. Co.,* (1939) 215 Ind. 206, 18 N. E. (2) 799, (certiorari den. 60 Sup. Ct. Rep. 75, 308 U. S. 556, 84 Law ed. 467).

Foudray v. *Foudray,* (1913) 54 Ind. App. 164; 101 N. E. 679, (transfer den. 1913).

Wichita Royalty Co. v. *City National Bank of Wichita Falls,* (1939) 59 Sup. Ct. Rep. 420, 306 U. S. 103, 83 Law ed. 383.

West v. *Am. Telephone & Tel. Co.,* (Dec. 1940) ..... Sup. Ct. Rep. ....., 85 Law ed. 146.

Rosenthal v. *Rambo,* (1905) 165 Ind. 584.

Stoner v. *N. Y. Life Ins. Co.,* (1940) ..... U. S. ....., 85 L. ed. 275.

V.

Where voluntary dismissals of two separate and former actions are made by the plaintiff, and covering the same subject matter, prior to the time of filing the present suit, the rule of this court on such dismissals may be applied if the court deems the facts and circumstances justify it, and the court may find and adjudge such two dismissals constitute an adjudication against plaintiff upon the merits of the action.

Rule 41, (1), and Rule 86, of the Rules of Civil Procedure for the U. S. District Courts, effective Sept. 18, 1938.

ARGUMENT.

MAY IT PLEASE THE COURT:

We here present the record of a case once tried and determined in a state court. The same subject matter is now before this court for review, coming up in a later action, asking the identical relief—the foreclosure of the same mortgage.

The right to enforce recovery on these securities, the effect of pleading as a defense the noncompliance by the first owner with the foreign corporation act, and the effect of the proceedings in this state court action, and other proceedings, as a defense interposed in the federal court are presented for consideration, and which we discuss in the order stated in the five preceding propositions.

I.

> By the terms of the corporation laws of Indiana, a foreign corporation failing to obtain a license as such is forbidden the use of its courts. If it ceases to exist without having complied, then any rights it ever had are forever barred, even in the hands of its successor, assignee or pledgee.

This foreign corporation act, as we refer to it herein, in common with those of most of the states, includes as one of its penalties for noncompliance with its provisions, a refusal to allow a violator the use of the state courts for any legal redress. Should such corporation file an action in a state court, the defendant could plead abatement for its failure to obtain the license. This plea would be good unless plaintiff would then properly procure its license, whereupon it could proceed with its suit. Thus the abate-

ment is only a temporary bar to the action. If, however, after exercising its corporation functions in the state without this statutory permission, it ceases to exist, by reason of insolvency, merger dissolution, or by any other means, then neither its legal representative, its assignee or other transferee can maintain the action. The theory of this Indiana law is that the contract of the corporation never had any legal existence, but it could have been legalized by the corporation complying with the act, the contract could be enforced. If no compliance was ever made, and none could ever be made, then an action on the obligation is barred. This distinction in the two situations has been consistently maintained through the various decisions of the Indiana Courts. Apparently the confusion arising is due to misinterpretation of these holdings.

Swing v. *Toner*, 178 Ind. 102, is the leading case in point, wherein the court had before it the defendant's answer alleging that plaintiff trustee's insurance company (an Ohio corporation) at the time it issued the policies of insurance in question, "had not complied with any of the laws of this State providing the conditions under which foreign insurance companies may transact their business of insurance here; that it never afterwards so complied, and that it had been disincorporated and rendered incapable of ever so complying with such laws" (p. 103). The appellant contended that the failure of the insurance company to so comply did not render its contracts void, but only suspended its right to enforce them until it did comply, and that the matter pleaded in this answer was only abatement. Counsel on both sides argued the question whether this failure on the corporation's part rendered its contract invalid or merely suspended enforcement until such compliance was made. The court said (p. 104):

> "We are not constrained to rest the decision of the question involved in this case on the determination of the above issue between counsel, for it is not neces-

> sarily involved therein. If the above stated position of appellant's counsel, is correct, it does not follow that the facts pleaded in the fifth paragraph of answer constitute matter in abatement and not in bar. If the insurance company in question was a solvent and going concern, so that it might subsequently comply with our laws, it would be matter in abatement only, if the decisions cited by counsel are to be followed. But the company became insolvent and was disincorporated—its life has been taken away by the state that created it. It is plain that it can never comply with the laws of our State."
>
> "As these contracts cannot be enforced in our courts until such compliance, and as this can never be, the rights under them are not merely suspended, they are barred."

In *Burroughs* v. *Southern Colonization Co.*, 96 Ind. App. 93, the trial court sustained a demurrer to an answer to the complaint. The answer set up a noncompliance by a foreign corporation with this Act, setting forth that the corporation was placed in the hands of a receiver and was no longer existing, and the question there raised was whether the contract of this company was void or voidable. The court stated (p. 104):

> "Whether, however, the contract involved is void or not can make no difference under the facts averred in this paragraph of answer. It is to be observed that it is averred therein that appellee was a foreign corporation and had not qualified and could not qualify in Indiana on account of its having been put in the hands of a receiver."

This answer was held good, and it was error for the trial court to sustain it.

In the *Lowenmeyer* case (71 Ind. App. 458), the court said (at p. 466):

> "Appellant contends that, even if it should be held that the purchase of said real estate was the transacting of business within the meaning of Par. 4085, *supra*, still this would not affect his right to maintain

the action. He bases this contention on the fact that the contract in question is not void, and asserts that he, being an assignee thereof before breach, may enforce the same, notwithstanding any failure on the part of such foreign corporation to comply with the statute under consideration. We cannot concur in this contention. It is well settled in this state that, when a foreign corporation has failed to comply with a statute giving it a right to transact business in this state, and becomes insolvent, a receiver or trustee appointed to administer its affairs cannot maintain an action brought in this state on a claim arising therein; and that, where such corporation reaches a state that prevents a compliance with such statute, the facts with reference to its noncompliance and condition may be pleaded in bar to the action (citing cases). It is thus made apparent that appellant, as assignee of the contract in suit, cannot assert any right thereunder which could not have been asserted by the foreign corporation through which he claims."

The Circuit Court below relied upon *Peter & Burghard Stone Co.* v. *Carper,* 96 Ind. App. 554, for the correct interpretation of the foreign corporation act, by an Indiana court. We assert its opinion is not the correct construction of the act. The opinion is lengthy, but owing to the importance of a proper construction, we beg the court's indulgence to allow us to extend our comments upon it. The Stone Co., a foreogn corporation, made a contract with one Klausman, the general contractor, under which it furnished the material and labor necessary to install the marble work on a bank building in Marion, Indiana, all being done without the company registering under this corporation act. After it completed the work the Stone Co. did comply with the act, and then filed its action (to recover compensation), as a claim against the Estate of Carper, the decedent having been a surety for Klausman, who had become insolvent. Here we have a live corporation itself prosecuting its own action. Carper's executrix

filed a plea in abatement, setting up that at the time the contract was made and the work was done, the Stone Co. had not complied with the act, and that by its failure it could not maintain an action upon its claim. Upon demurrer, this plea was held good, and upon judgment to that effect, the record was before the Appellate Court for review. The question presented is stated (p. 557):

> "Can a foreign corporation, which has made a contract and transacted business thereunder in this state by furnishing material and labor for the construction of a building before compliance with the statute relative to foreign corporations, upon subsequent compliance with such statute, maintain an action in a court of this state to recover for such material and labor?"

In the course of the opinion these various state statutes imposing conditions are divided into three classes, namely (p. 577):

> "The statutes imposing conditions upon foreign corporations may be divided into three classes: (1) Those declaring contracts of such corporations as fail to comply with the law void; (2) those declaring that such corporations shall do no business in the state without complying with the terms of the statutes, without declaring any penalty for failure to comply with the statute; and (3) those declaring certain penalties for failure to comply with the statute."
>
> "Contracts made in violation of the first and second classes are void."

According to this classification we would come under class 2, for by Section 4923 Burn's R. S. Ind., 1926, it is provided:

> "It shall not be lawful for any foreign corporation to transact business in this state until it has filed with the auditor of state a certified copy of a vote or resolution of its board of directors consenting that service of process in any action against it may be served upon the auditor of state in Indiana and agreeing that any process so served shall be of the same legal force and validity as if served upon such corporation and agree-

> ing that such service may be made with such effect while any liability remains outstanding in this state against such corporation." (See Appendix.)

This is taken from the Act of 1913, and which has no provision inflicting penalty for a violation. It makes the attempt to transact business before compliance unlawful, without the penalty clause. Thus under this very decision which the Circuit Court below claims it is decided that non-compliance does not render the contract void, it gives us a classification whereby respondent's securities are declared void. But this is not the only inconsistency contained in this opinion, for it does recognize the fact that the contracts of a non-existing corporation cannot be enforced. We quote from pages 598-9:

> "Some confusion seems to have arisen as to whether the failure of a foreign corporation to comply with the statute in question must be pleaded in abatement, or whether it can be set up in bar * * *. The correct rule appears to be stated in *Swing* v. *Toner* (1912) 178 Ind. 102, where the court, quoting from 1 Chitty, Pleading (16th Am. Ed.) par. 462, said: 'Whenever the subject-matter of the plea or defense is that the plaintiff cannot maintain any action at any time whether present or future in respect of the supposed cause of action, it may and usually must be pleaded in bar; but matter which merely defeats the present proceeding, and does not show that the plaintiff is *forever* concluded, should in general be pleaded in abatement."

Thus we observe that while the learned judge in writing his opinion is reluctant to state the contract is void, yet he does concede that as to the non-existent corporation it is a plea in bar. And for his authority he quotes from *Swing* v. *Toner*, the Lowenmeyer case and the Wiestling case, three of the leading cases which we claim are the proper authority on this act.

So we can reasonably conclude that after all there is harmony among these four decisions. We have always main-

tained this position. We did so on oral argument of the state court case before the Appellate Court in 1935; we stated the same position in our briefs and in our oral argument before the Circuit Court below. Thus in the Stone Co. case the validity of the contract is not the deciding factor. It is finally stated that if the corporation can and does comply, its contract becomes enforceable; and it is also conceded that where, as in the present case, the corporation has become non-existent, recovery on its contract is barred. And if it is barred it is immaterial whether it is valid or invalid, just as stated in the Swing-Toner case.

That part of this opinion holding that an action on the contract may nevertheless be prosecuted in the federal court is pure *dicta*. No state court or state legislature can create, confer, define or limit federal jurisdiction or federal procedure. Here we have the unfortunate situation in which the Circuit Court below, in passing upon the effect of a non-existent corporations contract, relies for its authority, upon a decision which involves only the right of a live corporation to itself enforce its contract, and that very decision itself concedes that there is a marked distinction between the rights of each, the contract of one can be enforced, the other is barred.

The decision in the Stone Co. case did not even attempt to say that a recovery could be had where the corporation without complying became non-existent; neither is there any other Indiana authority to this effect. Therefore the position of the Circuit Court below is not sound. On the other hand there are numerous authorities to the effect that recovery is barred.

The Circuit Court below refers to the case of *Selph* v. *Illinois Pipe Line Co.*, 206 Ind. p. 490, as confirming the decision in the Stone Company case, but that cannot give them much comfort. The facts in the Selph case show the Pipe Line Company came into the state and constructed a pipe line across appellant's land, but a few weeks later it did

comply with this foreign corporation law by filing the necessary documents, and further, the Pipe Line Company was not the plaintiff in the case. Selph brought his action to quiet title against the Pipe Line Company, and contended that the contracts he made with the company were void on account of their noncompliance with this foreign corporation law. The court held that their subsequent compliance made the contracts valid. This is good law, and with it we agree. The point we raise is, that this, like the Stone Co. case, is one where the corporation is still alive and has put itself in a condition to lawfully transact business in the state and this case is not a good authority to rely upon in passing upon the question of a contract made by a corporation that went out of existence without complying.

II.

The making of such contract without complying with the act, was an unlawful act by such corporation, and which is against the public policy of the State of Indiana.

This Section 4923 is an act of the 1913 Legislature, passed six years after the other sections of this act became effective. It is apparent the legislature deemed the same a necessary supplement to some of the other sections already in force, as it provides for further duties and restrictions, which no doubt experience in applying revealed a necessity therefor. It provides (See Appendix p. 37):

> "It shall not be lawful for any foreign corporation to transact business in this state until it has filed with the auditor of state a certified copy of a vote or resolution of its board of directors consenting that service of process in any action against it may be served upon the auditor of state in Indiana * * *."

By declaring "it shall not be lawful for the corporation to transact business, etc.," without a penalty, it is placed

in class two of the classification defined in the opinion in the Stone Co. case and whereby contracts made in violation of this class are held to be void, and to which fact we have heretofore made reference.

III.

The note and mortgage in question are not enforceable in the state courts of Indiana, and cannot be enforced in the federal courts. The federal court must and will accept, adopt and apply the Indiana statutes and decisions of its courts of appeals the same as though the federal court were sitting as a state court.

While we have cited quite a number of authorities in support of this proposition, we will not attempt to elaborate upon them. In other parts of this brief we comment from the well known and understood case of *Erie R. Co.* v. *Tompkins*, and likewise from the Wichita Royalty case. The remaining cases, with one exception, are recent expressions from this court, and all in line with the very sound theories and principles of law contained in the Erie case opinion.

It is conceded no recovery can be had on the note and mortgage in question in the state court. The decision of the Appellate Court in the Barnett case settled the law involved. Plaintiff in the present action in its complaint admits no recovery can be had in the state court by virtue of this decision (R. 8).

This is an action *in rem*, and consequently, the subject matter of the suit is the same regardless of who is the owner of the securities. If this Appellate Court decision held that the plaintiff in that case could not recover on account of the disability of the original owner and holder, The Chicago Trust Company, then the same securities have no legal force in the hands of any subsequent owner.

So whenever they are exhibited in any action as a basis for recovery, the same defense is good. This appeal settled the law to the effect that this answer in question was a good defense in bar to an action on the note and mortgage. The opinion did not state that any certain plaintiff was prevented from bringing an action. It goes deeper than that. It holds that a recovery upon the note and mortgage, regardless of its owner, is barred.

Now the question remains, if the state court bars a recovery, is a recovery in the federal court likewise barred? Since the decision in Erie R. Co. *vs.* Tompkins there can be no doubt upon the proposition that where plaintiff cannot prevail in the state court for reasons going to the merits of his case on account of the state law or its decisions, the federal courts will put themselves in the same position and will likewise bar a recovery. In fact, this was the law and the rule prior to the decisions in the Erie case, and had been most generally applied. It is now universally agreed that there is no reason for a dual system of law—one in the state court and the other in the federal court. And further than this, there had never been any question about the federal court following the state law in actions named as purely local, such as those enforcing liens, or real estate actions brought to determine or declare title in land, and others of a similar nature. The foreclosure of a real estate mortgage is altogether of a local nature. In fact, the holder of a mortgage looks to the state law for his protection, such as are afforded by its recording laws, the statutes governing the execution of the mortgages, their foreclosure, redemption therefrom, and in case of no redemption, then defining his rights to obtain a title to the real estate under his decree of foreclosure. So, if all of these things are of a local nature, the action is local, and there can be no excuse for a federal court refusing to follow the state law, because the federal court can have no interest different from that of the state court. Even in the

event plaintiff should finally recover in this action and follow his foreclosure to the end by having a sale of the premises to satisfy its judgment, and in case of failure of redemption, to obtain a deed on his decree, the validity of this deed and the rights of the defendants to redemption are all governed by the state law. Therefore, there can be no right, or interest, or remedy other than which is given by the state in an action to foreclose.

If the federal court could adopt its own law in the premises, an arbitrary abuse would be present. The same defendant could be taken into court by the same plaintiff, in the federal court on a $3000.00 mortgage and in the state court on a $2,999.00 mortgage, both alike in their substance. In the state court he would have a defense given by the state law, which would defeat a recovery. Yet, in the federal court he would lose if the federal court is not required to follow the same law.

IV.

> The decision of the Indiana Appellate Court in *Barnett* v. *Central Republic Bank and Trust Co.*, 100 Ind. App. 495, reversing a judgment rendered in the Porter Circuit Court, became and is the law of the case, which a state court of Indiana or a federal court on a retrial on a second appeal thereof must follow and apply.

We cite three Indiana cases under this proposition, all of which are in accord on this proposition. In the Foudray case it is stated:

> "It has been uniformly held in this state that a judgment upon appeal rules the case on a subsequent appeal involving the same questions."

And in the Town of Walkerton case the court said:

> "Appellant is correct in its claim that the former decision is to be regarded as the law of the case so far

as it is determinative of the matters therein considered."

And the Rosenthal case recites the same proposition.

In the Wichita Royalty Co. case, it is stated (p. 107):

> "In departing from the 'law of the case,' as announced by the state court, and applying a different rule, the court below correctly stated that by reason of the removal it had ben substituted for the Texas Supreme Court as the appropriate court of appeal and that it was its duty to apply the Texas law as the Texas court would have declared and applied it on a second appeal if the cause had not been removed. It was the duty of the federal court to apply the law of Texas as declared by its highest court." Citing *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 82 L. ed. 1188.

The opinion in *Stoner* v. *N. Y. Life Ins. Co.* (1904), 85 L. ed. 275, clearly expresses the law on this point. We quote from page 277:

> "We have recently held that in cases where jurisdiction rests on diversity of citizenship, federal courts, under the doctrine of Erie R. Co. *vs.* Tompkins * * * must follow the decisions of intermediate state courts in the absence of convincing evidence that the highest court of the state would decide differently (citing West *vs.* Am. T. & T. Co., and two other cases recently decided). In particular this is true where the intermediate state court has determined the precise question in issue in an earlier suit between the same parties, and the highest court of the state has refused review."
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> "Twice the Kansas City Court of Appeals has had before it appeals involving the same parties, insurance contracts, and facts as are involved here * * *. Each time respondent argued that petitioner's evidence failed to present a submissible case * * *. Each time the Kansas City Court of Appeals expressly stated that the evidence as to total disability presented a question for the jury."

In *Eppenauer* v. *Ohio Oil Co.*, (1938) 98 F. (2) 524, the District court below entered a decree quieting plaintiff's

title to certain tracts of land. The action was brought to determine and establish boundary lines. The Texas Supreme Court, in a former action, after considering the various conflicting surveys, fixed the correct boundary lines on the ground. The opinion states that by virtue of this action the Texas court had validated plaintiff's title, and under the doctrine of *stare decisis* obtaining in Texas all parties thereafter claiming vacancies in conflict with this decision are bound by it whether parties to the suit or not, and that such was the settled law of Texas which the Fifth Circuit Court felt bound to follow.

Following these authorities, only one conclusion can be reached, and to the effect that the proceedings in the state court cases fully decided the issues involved in petitioner's favor. Then the plaintiff dismissing these, fully set the matter at rest. This case was rightfully decided by the trial court below, who recognized this former litigation as determinative of the present case.

V.

> Where voluntary dismissals of two separate and former actions are made by the plaintiff, and covering the same subject matter, prior to the time of filing the present suit, the rule of this court on such dismissals may be applied if the court deems the facts and circumstances to justify it, and the court may find and adjudge that such two dismissals constitute an adjudication against plaintiff upon the merits of the action.

This present action was pending in the District Court below when the rules became effective (September 18, 1938). Rule 86 provides they will govern pending causes excepting where in the opinion of the court their appli-

cation in a particular action pending when the rules took effect would not be feasible or would work injustice. But that circumstance could not be present in this case. In fact, it is quite apparent this proposition in Rule 41 concerning two dismissals was made to prevent conduct like that of the owner of these securities. The first plaintiff voluntarily chose the state court for its forum. It had the choice of either the state or federal court. Then as a matter of precaution, it filed an action in the federal court below. One week after obtaining its judgment in the state court it voluntarily dismissed the one pending in the district court below. Now, it must have reasoned, that having procured a judgment in the state court, it would rely upon such recovery. But when the latter was reversed by the Appellate Court, it knew further proceedings in the state court would be futile, so back into the federal court it comes with the present case. Respondents have been compelled to defend in three separate actions when one would have been sufficient. It is quite obvious plaintiff-respondent is asking the federal court to grant it a relief the state court has refused to give.

While this question in itself would scarcely justify this court's intervention, nevertheless it is present; therefore we bring it to the court's attention for consideration as to whether the Circuit Court below made the proper application of the rule. It certainly is a matter wherein this court has the right to exercise its supervisory powers over proceedings below.

Conclusion.

This note and mortgage have been in litigation for ten years. The matter in controversy should be set at rest. No Indiana decision holds that a recovery can be had where the corporation involved has ceased to exist. On the other hand, the authorities we quote are to the effect that the contract of a non-existent corporation under circumstances like those present are definitely barred. If the opinion of the court below could have rested on one decision holding that such a contract could be enforced, the situation might be different. We trust we have clearly shown that the Stone Co. case is no anchor in the storm. The assertion that the contract in question is legal is not a sufficient justification to allow the federal court to foreclose the mortgage. The owner of the securities itself created the situation whereby the Appellate Court decision was rendered. It first invoked the aid of the state court. Now its successor wants to repudiate that court.

We have set forth several authorities from the different Circuit Courts in support of our assertion that the Seventh Circuit in the present case has made a decision out of line with those in these other circuits. In all of those cases the courts have expressed a willingness to follow the spirit and the letter of this doctrine relative to applying the state law. We therefore, in the cause of brevity, will omit quotations therefrom.

We sincerely believe the Seventh Circuit Court of Appeals has wholly disregarded the Indiana law and the proper decisions of its courts by its failure to recognize and follow the law and upon a subject matter completely local in all respects, and in a matter of very serious importance to all our citizens.

We therefore respectfully assert that the present case is one requiring the supervisory powers of this court over

the judgments and decrees of the Circuit Courts of Appeal. To the end that the errors committed by the Seventh Circuit Court of Appeals, as herein set forth, may be corrected; and that petitioners may be granted the rights to which they are entitled under the laws of the State of Indiana, we therefore pray that a writ of certiorari be granted, and whereby this court may review the decision of the Seventh Circuit Court of Appeals in question, and finally reverse it.

Respectfully submitted,

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